

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Amendments to Parts 1, 2, and 101
of the Commission's Rules to
License Fixed Services at 24 GHz

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WT Docket No. 99-327

REPLY COMMENTS OF TELIGENT, INC.

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Dated: February 7, 2000

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Teligent, Inc. ("Teligent") hereby submits its reply comments in the above-captioned proceeding.¹

I. INTRODUCTION

The comments submitted in this proceeding reflect general agreement that the Commission should adopt a flexible, deregulatory approach to the 24 GHz band. Commenters agree that, in a flexible policy regime, the Commission's rules should not constrain 24 GHz licensees from discovering and developing new applications for the band nor should the Commission endeavor to predict them. Licensees should be given maximum freedom to use their spectrum so long as they do not cause harmful interference to other licensees. In pursuing spectrum management policies and procedures that maximize social returns, the Commission should not allocate spectrum to particular services several years before a need for such spectrum has been demonstrated or could even be put to use.

¹ Amendments to Parts 1, 2, and 101 of the Commission's Rules to License Fixed Services at 24 GHz, WT Docket No. 99-327, *Notice of Proposed Rulemaking*, FCC 99-333 (rel. Nov. 10, 1999) ("Notice").

Requests for consistent regulatory treatment of all fixed wireless services also predominate the comments. Uniform regulatory constructs ensure that similarly situated carriers succeed or fail in the marketplace on the basis of cost, quality, and other relevant factors, not regulatory distortions. Certain of the proposals in the Notice fail to establish uniformity between the 24 GHz band and other comparable fixed wireless bands, including 39 GHz and LMDS. In its Comments, Teligent suggested ways to amend these proposals to create parity. Although some commenters would have the Commission ignore notions of parity, it should reject such entreaties, and instead strive to eliminate all unnecessary regulatory distinctions.

II. THE COMMISSION'S PROPOSED RULES AFFORD CARRIERS THE PROPER LEVEL OF FLEXIBILITY TO RESPOND TO MARKETPLACE DEMANDS.

All of the commenters agree with the Commission's proposals to grant carriers the flexibility to utilize their licenses in a manner driven by the market rather than regulatory fiat. Specifically, the comments make clear that the Commission should allow carriers to self-designate their regulatory status and should permit the operation of mobile services in the 24 GHz band on a non-interference basis. The Fixed Wireless Communications Coalition ("FWCC") notes that equipment is not yet available for mobile services, nor has any carrier requested authority to provide mobile services; therefore, operation of mobile services in the 24 GHz band should be limited to non-primary status.² Similarly, "PCIA urges the Commission to retain the primary

² Amendments to Parts 1, 2, and 101 of the Commission's Rules to License Fixed Services at 24 GHz, WT Docket No. 99-327, *Comments of Fixed Wireless Communication Coalition* at 2-3 (filed Jan. 19, 2000) ("FWCC Comments"); *Comments of Wireless One* at 1 (filed Dec. 29, 1999).

status of fixed services in these frequencies . . . [because] a demonstration [has not] been made that mobile operations would not interfere with fixed operations in this or other bands."³

Teligent agrees that the Commission's rules should not attempt to anticipate the technological and market forces that will lead to the most efficient utilization of the 24 GHz band. Consequently, Teligent concurs with those commenters, and the Commission's proposal, to permit mobile service on the condition that operations be conducted in the 24 GHz band in a manner that avoids interference with fixed operations within (and directly adjacent to) a licensee's service areas. Stated differently, licensees should be given maximum flexibility to use their spectrum so long as they do not cause harmful interference to other licensees. In its Spectrum Policy Statement the Commission made this point clear: "[f]lexible allocations may result in more efficient spectrum markets. Flexibility can be permitted through the use of relaxed service rules, which would allow licensees greater freedom in determining the specific services to be offered."⁴ Not only does such a policy lead to efficient spectrum utilization, it is similar to those policies the Commission adopted for GWCS, CMRS, IVDS, and wireless services in the 39 GHz band and LMDS.

In addition, flexible, market-driven spectrum policies require that carriers have the ability to utilize their spectrum in a manner that best promotes a wide range of service offerings. Carriers should be permitted to aggregate, disaggregate and partition their licenses as the

³ Amendments to Parts 1, 2, and 101 of the Commission's Rules to License Fixed Services at 24 GHz, WT Docket No. 99-327, *Comments of the Personal Communications Industry Association* at 4 (filed Jan. 19, 2000).

⁴ Principles for Reallocation of Spectrum to Encourage the Development of Telecommunications Technologies for the New Millennium, *Policy Statement*, FCC 99-354 at ¶ 9 (Nov. 22, 1999) ("Spectrum Policy Statement").

Commission has proposed.⁵ This policy has been quite successful in promoting unimpeded license transferability to parties that value spectrum most and overcoming entry barriers for smaller entities in other Commission-regulated services. Moreover, alienability of whole or partial licenses, subject, of course, to the Commission's rules, is a key component of a competitive market because it allows carriers to respond to the demands of the marketplace in an efficient manner by placing spectrum in the hands of the user that finds it most valuable.

Commenters that addressed this issue also agree with Teligent that notions of flexibility should extend to operational rules as well -- subject, of course, to non-interference requirements.⁶ Specifically, it is clear that the Commission must amend section 101.147(r) to eliminate distinctions between nodal stations and user stations that have the effect of limiting the types of transmission technologies carriers can deploy. For instance, the present rule interferes with a carriers' ability to utilize Time Division Duplex (TDD), a transmission technology with particular advantages for digital services.⁷ Similarly, the Commission's antenna directivity requirements should no longer be applicable to a service that relies on wide-area licensing and point-to-multipoint technologies.

⁵ See Wireless One Comments at 2.

⁶ See PCIA Comments at 11-12; FWCC Comments at 3-4.

⁷ See Amendments to Parts 1, 2, and 101 of the Commission's Rules to License Fixed Services at 24 GHz, WT Docket No. 99-327, *Comments of Teligent* at 40-41 (filed Jan. 19, 2000); *Comments of Ensemble Communications* at 1-3 (filed Jan. 19, 2000).

III. THE COMMISSION SHOULD STRIVE TO CREATE REGULATORY PARITY FOR ALL FIXED WIRELESS LOCAL EXCHANGE SERVICE PROVIDERS, REGARDLESS OF THE SPECTRUM BAND THEY MAY UTILIZE.

Several commenters have noted that some of the proposed 24 GHz rules, for both the auction and for operating matters, create unwarranted disparity with other fixed wireless bands used to provide similar services. The Commission, however, has recognized that such disparity is not conducive to promoting the efficient utilization of spectrum. Specifically, it has concluded that

[h]armonization [of rules for like services] provides regulatory neutrality to help establish a level playing field across technologies and thereby foster more effective competition. Such a structure would permit reliance on the marketplace to achieve the highest-valued use of the spectrum. It would also ensure that the Commission and its processes do not become a bottleneck in bringing new radio communications services and technologies to the public.⁸

In this light, it seems clear that certain modifications should be made to the proposed 24 GHz auction rules and operational requirements to ensure that the Commission's rules do not unduly and unnecessarily intrude upon marketplace decisions.

A. The Level Of Bidding Credits Adopted For The 24 GHz Auction Should Mirror The Bidding Credits Adopted In The 39 GHz Auction.

In its Comments, Teligent supported the Commission's decision to utilize bidding credits to promote economic opportunity for a wide variety of applicants while preserving the advantages of competitive open bidding.⁹ As noted in the Comments, however, the proposed bidding credits of 25 percent for very small businesses and 15 percent for small businesses vary significantly from the bidding credits the Commission adopted for the 39 GHz auction (35 percent for very small

⁸ Spectrum Policy Statement at ¶ 9.

⁹ Teligent Comments at 50; see Wireless One Comments at 2-3.

businesses and 25 percent for small businesses),¹⁰ although the services provided in these two bands are quite similar and the areas to be licensed identical. The Commission should strive to eliminate these regulatory disparities that lead to marketplace distortions. By adopting different credits, the Commission's action will likely disadvantage certain entities that would qualify for credits and possibly affect their access to capital markets.

In contrast to those demonstrating the need for parity, the Rural Telecommunications Group ("RTG") requests that the Commission create additional disparities between the 24 GHz auction and the 39 GHz auction, though it acknowledges in a separate proceeding that these services "are particularly similar both in terms of technical limitations of the bands and the types of services that providers are or anticipate offering."¹¹ Specifically, RTG seeks an additional bidding credit for "entrepreneurs" and a special bidding credit available only to rural telephone companies.¹² RTG reasons that an entrepreneur credit was established in the LMDS auction¹³ and

¹⁰ See Auction of Licenses for Fixed Point-to-Point Microwave Services in the 38.6 to 40.0 GHz (39 GHz) Band, Report No. AUC-99-30-B (Auction No. 30), DA 00-112 at 15 (rel. Jan. 21, 2000).

¹¹ Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, to Reallocate the 29.5-30.0 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services, CC Docket No. 92-297, *Comments of The Rural Telecommunications Group* at 6, n.9 (filed Jan. 21, 2000) ("RTG LMDS Comments").

¹² Amendments to Parts 1, 2, and 101 of the Commission's Rules to License Fixed Services at 24 GHz, WT Docket No. 99-327, *Comments of the Rural Telecommunications Group* at 17-18 (filed Jan. 19, 2000); see PCIA Comments at 19-20.

¹³ Interestingly, RTG concludes that LMDS carriers have not been quick to deploy service. See RTG LMDS Comments at 11. This supports Teligent's proposition that Commission rules should not only be focused on participation in the auction, but must also consider the effect its rules will have on carriers after the spectrum is allocated and their ability to deploy service.

that this "allowed some small businesses and rural telephone companies to participate in LMDS,"¹⁴ while a rural telephone credit would satisfy the intent of section 309(j).¹⁵ Neither of these suggestions has a sound basis.

In the RTG LMDS Comments, RTG expressly recognized the dilemmas that arise when the Commission adopts disparate regulation between competitive, largely substitutable services. RTG concluded that the restriction on ILEC eligibility, applicable only in LMDS, has "hampered the deployment of services in rural areas."¹⁶ Yet, somewhat incongruously, it requests in the instant proceeding that the Commission adopt a bidding credit formula that has the same effect as an eligibility restriction because it would bias the possible participants in the auction and therefore in the service vis'-à-vis' other largely substitutable services.

The fact is that many of these proposed incentives and restrictions, while well intentioned, have the effect of distorting the free and efficient operation of the market. Section 309(j)(3) requires the Commission, in effect, to achieve certain objectives that are in the public interest -- in

¹⁴ RTG Comments at 18. In the 39 GHz auction, however, the Commission declined to create a special entrepreneur bidding credit. As discussed above, the similarities between the 39 GHz service and the 24 GHz service warrant similar treatment of the two with respect to the conduct of the auction. Therefore, the Commission should reject calls for an entrepreneur credit in this proceeding.

¹⁵ RTG Comments at 19. In the LMDS proceeding, the Commission expressly rejected a special bidding credit for rural carriers, instead concluding that "rural companies have been granted special advantages under the bidding rules as small businesses in their acquiring a license." Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, to Reallocate the 29.5-30.0 GHz Frequency Band, to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services, CC Docket No. 92-297, *Third Order on Reconsideration*, 13 FCC Rcd 4856 at ¶ 86 (1998).

¹⁶ RTG LMDS Comments at 1.

addition to the efficiencies that are gained by auctioning spectrum. Bidding credits that are uniform among competing services satisfy Congress' intent while minimizing distortionary affects on the market that arise from them.

B. The Size Of 24 GHz License Territories Should Be Based On EA Boundaries, Consistent With License Territories Of The 39 GHz Service.

A few commenters oppose the Commission's proposal to auction EA-based 24 GHz licenses.¹⁷ They contend that the use of EA license areas will lead to inadequate service in rural areas and preclude rural telephone companies and small businesses from acquiring licenses to serve these markets. RTG further disputes the Commission's conclusion that disaggregation "will provide a means to overcome entry barriers through the creation of licenses for smaller geographic areas that require less capital, thereby facilitating greater participation by, and economic opportunity for, smaller entities such as small businesses."¹⁸ In place of the current disaggregation and partitioning rules, RTG proposes that after five years

the Commission [should] require licensees to enter into partitioning negotiations with any rural telephone company that propose[d] to provide service to an area in which the licensee itself does not provide service. If the companies cannot reach an agreement within 90 days, then the Commission could require the licensee to partition the area at a price tied to the pro rata price per POP at which the licensee acquired the license at auction.¹⁹

¹⁷ See RTG LMDS Comments at 1; see also Amendments to Parts 1, 2, and 101 of the Commission's Rules to License Fixed Services at 24 GHz, WT Docket No. 99-327, *Comments of the Small Business Administration* at 1-3 (filed Jan. 19, 2000); PCIA Comments at 5-7; but see Teligent Comments at 11-12; Wireless One Comments at 2.

¹⁸ Notice at ¶ 26.

¹⁹ RTG Comments at 16.

The commenters' concerns regarding the use of EA license areas are unsupported by facts and insupportable by theory. Their arguments appear to depend upon the proposition that economic incentives vary with the identity of the supplier/licensee. Other things equal, this is highly improbable. In fact, every licensee has the incentive to provide service whenever profits can be derived. Commenters supporting smaller geographic areas have no reason to doubt that those carriers that acquire EA licenses containing rural areas will provide service to those areas. As the court in Fresno Mobile concluded, as long as there exists a market that can be served above cost, the Commission cannot expect a licensee will warehouse spectrum in the manner suggested by supporters for smaller licensing areas.²⁰

Larger geographic areas should facilitate wider service because of scale economies. However, if an EA licensee, notwithstanding economies of scale, elects not to provide service to the entire license area, the disaggregation and partitioning rules permit it to sell that portion of the license. RTG's assertions that licensees have "rebuffed" such efforts are unsupported.²¹ The most reasonable inference to draw from a licensee's refusal to partition and sell is that the licensee values the spectrum that covers these areas. RTG would have the Commission assume that a carrier would rather retain an unused, and therefore "allegedly" unprofitable, portion of a license than sell it to another carrier. In a market driven licensing scheme, where, through auctions and disaggregation policies, licenses are in the hands of users that value them most, this assumption

²⁰ See Fresno Mobile Radio, Inc. v. FCC, 165 F.3d 965, 969 (D.C. Cir. 1999) (explaining that elementary economic principles mandate that "a rational licensee [regardless of how it obtained its license] will voluntarily put its spectrum into service only when the additional revenue it expects to earn from doing so exceeds the additional cost it must incur to do so.").

²¹ RTG Comments at 10.

cannot possibly be the basis for government policy because it posits, as the norm, irrational behavior. A rational licensee would be expected to profit maximize either by providing service to the area or partitioning the license and selling the unused portion to someone who would.

C. The FCC Should Adopt License Terms And Renewal Expectancies Consistent With Those Of Other Fixed Wireless Licensees.

The comments clearly support Commission adoption of a 10-year license term, coupled with a renewal expectancy based on substantial service for 24 GHz service providers.²² No commenter has put forth arguments to the contrary. Because the standard exists for other fixed wireless services, the Commission should not diverge from this approach without some material basis for doing so.

Moreover, no commenter supports the additional "safe harbor" construction requirement that would be uniquely applicable to 24 GHz fixed wireless carriers.²³ As noted above, all carriers have the incentive to provide service throughout their license territory. A construction requirement, in addition to a substantial service standard for renewal expectancy, is therefore unnecessary. No reason has been proffered by the Commission or by commenters that would support a mandatory construction requirement for service in the 24 GHz band in addition to a substantial service requirement for renewal expectancy.

²² See PCIA Comments at 16-17; FWCC Comments at 7.

²³ RTG does not argue in support of the proposed construction requirements found in proposed section 101.527, 47 C.F.R. § 101.527. Rather, it urges that a carrier's failure to provide service in a particular area should subject that carrier to the risk that some other provider may try to fill-in for that area or alternatively, the Commission should force the carrier to deal with a carrier proposing to offer service in an unconstructed area. RTG Comments at 16. See infra.

IV. THE COMMISSION SHOULD NOT ALLOW SPECTRUM THAT IS AVAILABLE TODAY FOR PROMOTING LOCAL COMPETITION TO BE UNNECESSARILY ENCUMBERED FOR SEVEN YEARS AT THE REQUEST OF BSS OPERATORS.

In its substituted comments in this proceeding,²⁴ DIRECTV reasserts its claim that the Commission should preserve spectrum at 24 GHz for BSS feeder uplink use, although it continues to admit that BSS operators have no plans to use this spectrum "for several years."²⁵ In fact, BSS operators cannot utilize this spectrum until April 1, 2007, at the earliest, when the corresponding downlink BSS spectrum allocation at 17.3-17.8 GHz becomes available.

While DIRECTV has indicated on a number of occasions that it no longer plans to use the 200 MHz of overlapping fixed wireless 24 GHz spectrum, i.e. 25.05-25.25 GHz, it is still important to address this issue in this proceeding.²⁶ Specifically, based on DIRECTV's original BSS expansion system application (of June 1997) and accompanying petition for rulemaking, the Commission is considering DIRECTV's initial request for a full 500 MHz of 24 GHz uplink spectrum (including the 200 MHz of fixed wireless 24 GHz spectrum, i.e., 25.05-25.25 which is

²⁴ See Amendments to Parts 1, 2, and 101 of the Commission's Rules to License Fixed Services at 24 GHz, WT Docket No. 99-327, *Substituted Comments of DIRECTV* (filed Jan. 19, 2000). Teligent notes that because DIRECTV filed "substituted comments" on January 19, 2000, the Commission should not give weight to any of the points raised in DIRECTV's earlier filed comments (December 10, 1999) in this same proceeding.

²⁵ Id. at 3.

²⁶ See Letter to Magalie Roman Salas, Secretary, Federal Communications Commission, from James H. Barker, Counsel for DIRECTV Enterprises, Inc. (Sep. 16, 1999); see also Redesignation of the 17.7-19.7 GHz Frequency Band, Blanket Licensing of Satellite Earth Stations in the 17.7-20.2 GHz and 27.5-30.0 GHz Frequency Band, and the Allocation of Additional Spectrum in the 24.75-25.25 GHz Frequency Bands for Broadcast Satellite Service Use, IB Docket No. 98-172, et al., *Comments of DirectTV Enterprises, Inc.* (filed Nov. 19, 1998).

the subject of this instant proceeding) in a pending rulemaking proceeding.²⁷ As a result, despite DIRECTV's changed plans with respect to use of this 200 MHz of overlapping spectrum, it is possible that BSS expansion system uplink capacity could be allocated over the full 500 MHz of spectrum, which includes the 25.05-25.25 GHz frequency band. The fact that DIRECTV has even submitted comments in this proceeding, which does not otherwise involve the portion of the 24 GHz spectrum DIRECTV claims it will now use for its uplinks, *i.e.*, the 300 MHz at 24.75-25.05, is indicative of the fact that DIRECTV contemplates that the Commission may indeed allocate the full 500 MHz of spectrum in spite of arguments against BSS use of the 200 MHz of overlapping fixed wireless spectrum. Should that occur, as Teligent and other commenters have noted, it would be premature for the Commission to develop rules for the coexistence of 24 GHz fixed licensees and future satellite licensees at this time.²⁸ Technology is developing so quickly that rules written today for the purpose of governing the use and sharing of this spectrum in seven years could be obsolete before they became effective. Any technical limitations on terrestrial systems in contemplation of future BSS use would, in that event, simply create needless and potentially service stifling burdens on 24 GHz licensees.

²⁷ Redesignation of the 17.7-19.7 GHz Frequency Band, Blanket Licensing of Satellite Earth Stations in the 17.7-20.2 GHz and 27.5-30.0 GHz Frequency Band, and the Allocation of Additional Spectrum in the 24.75-25.25 GHz Frequency Bands for Broadcast Satellite Service Use, IB Docket No. 98-172, et al., *Notice of Proposed Rulemaking*, 13 FCC Rcd 19923 (1998) ("BSS NPRM").

²⁸ Teligent Comments at 9; PCIA Comments at 5; FWCC Comments at 3 (both commenters observing that the Commission should not act precipitously given that there are seven years remaining before BSS can effectively use the 24 GHz band).

All of the commenters that addressed this issue agree with the Commission's tentative decision to deny DIRECTV's request.²⁹ They agree that there is no immediate need to allocate spectrum for BSS feeder links, and that this issue would be better addressed closer to the time BSS operators are ready to use the spectrum.³⁰ If, in 2007, BSS operators require spectrum in the 24 GHz band for feeder uplinks and if the Commission assigns such spectrum in the portion of the band that overlaps with fixed wireless terrestrial licensees, that would be the appropriate time for the Commission to address any sharing issues that might arise. Teligent has proposed that if and when a potential satellite licensee submits an application for BSS feederlink use of 24 GHz frequencies, at that time a formal working group with representatives from all interested parties be convened to develop sharing criteria and the appropriate separation distance for non-ubiquitous BSS uplink earth stations in order to protect incumbent fixed operations at 24 GHz.³¹

The Commission has previously addressed and tentatively rejected DIRECTV's proposed rationale for an allocation of spectrum for BSS feeder links in a separate rulemaking proceeding.³² Although the Commission noted that "BSS is a rapidly growing service" that may require additional spectrum in the coming years,³³ it tentatively denied the request for the same reason it should deny DIRECTV's request in this proceeding -- the earliest DIRECTV could receive additional expansion system spectrum is April 1, 2007. As the Commission concluded previously,

²⁹ See Teligent Comments, PCIA Comments, FWCC Comments.

³⁰ See Notice at ¶ 7.

³¹ See Teligent Comments at 9-10.

³² BSS NPRM at ¶ 73.

³³ Id. at ¶ 79.

it would be premature to allocate spectrum at 24.75-25.25 GHz prior to 2007, and premature to adopt sharing criteria so many years before DIRECTV could even use such spectrum.³⁴

Finally, in its recent Policy Statement on spectrum allocation, the Commission made clear that the public interest is best served by making more spectrum available for use.³⁵ Indeed, the demand for spectrum has become so great that existing allocations may not satisfy current, let alone future needs, thereby requiring the Commission to develop strategies for market-based incentives to ensure efficient use of spectrum.³⁶ Despite this apparent spectrum scarcity, DIRECTV requests that the Commission reserve spectrum for its use. The Commission should not ignore its own concerns raised in the Policy Statement, and allow DIRECTV to reserve valuable spectrum so that it can be certain that spectrum will be available if it needs to expand its systems in 2007.³⁷

V. THE COMMISSION SHOULD BEGIN THE 24 GHz SPECTRUM AUCTION AS SOON AS POSSIBLE.

Agreement among all commenters on the vast majority of issues raised in the Notice suggests that there are few, if any, obstacles that would appear to require protracted deliberation on the part of the Commission and delay the release of a final order in this proceeding. Teligent, therefore, respectfully urges the Commission to expedite this rulemaking proceeding and release a final order as soon as possible to ensure that the 24 GHz auction can commence prior to year end.

³⁴ Id. at ¶¶ 81-82.

³⁵ See Spectrum Policy Statement at ¶ 14.

³⁶ Id.

³⁷ See Substituted Comments of DIRECTV at 3-4.

By following this course of action, the Commission will ensure that facilities-based, broadband, local service competition reaches more consumers as expeditiously as possible, while minimizing the marketplace disparities that will result if the 24 GHz auction is unduly delayed.

The Commission has made clear that its "primary goal in the present proceeding is to encourage efficient competition, particularly in the local exchange telephone market."³⁸ Any failure to expedite the availability of a critical input, namely spectrum, limits the realization of that goal and the ability of fixed wireless carriers to offer service in competition with incumbents.³⁹ The sooner the Commission finalizes the processes to make this 24 GHz band spectrum available and places it in the hands of service providers, the sooner it can be sure that its objectives will be satisfied.⁴⁰

Moreover, placing this spectrum in the market sooner will minimize any disparities which might otherwise exist between 24 GHz licensees and other fixed wireless service providers. The Commission has already concluded that 24 GHz licensees will be offering service in competition not only with incumbent local exchange carriers, but also with other fixed wireless providers such

³⁸ Notice at ¶ 20.

³⁹ See generally 1998 Biennial Regulatory Review Spectrum Aggregation Limits for Wireless Telecommunications Carriers, et al., WT Docket No. 98-205, et al., *Report and Order*, FCC 99-244 at ¶¶ 25, 31 (rel. Sep. 22, 1999) (noting that carriers' ability to enter markets is limited by the amount of spectrum that is available and that the FCC's authority over spectrum licensing controls the degree to which new entrants can provide service).

⁴⁰ In the case of Teligent (as with an increasing number of companies), it already has the requisite state authorities and interconnection agreements necessary to immediately use most, if not all, of the licenses it could acquire in the auction. It, therefore, can begin building new networks and expand existing capacity as soon as the Commission releases the spectrum. In contrast, a long delay in commencing the auction will unnecessarily postpone Teligent's expansion of service within its existing service areas and into those new areas outside of its existing markets.

as licensees in the LMDS, 39 GHz, MMDS, and WCS bands.⁴¹ For each of these services, however, the Commission has already auctioned, or is scheduled to auction in the coming months, nationwide spectrum. Thus, certain fixed wireless carriers may have a regulatory-created advantage in constructing nationwide footprints, and the economies of scale that result from them, in competition with 24 GHz licensees.

Finally, the commercial availability of 24 GHz broadband equipment which translates into an immediate ability to provide service on the spectrum to be auctioned, counsels very strongly in favor of making this spectrum available as soon as possible, particularly given the Commission's goal of promoting local competition.

⁴¹ Notice at ¶ 21.

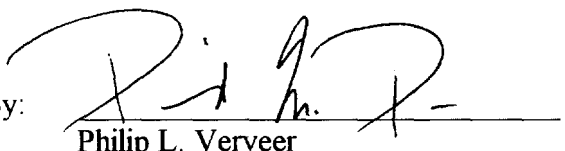
VI. CONCLUSION

For the reasons stated herein and in its Comments, Teligent respectfully requests that the Commission adopt deregulatory, procompetitive auction rules and service rules for the 24 GHz band as soon as possible. Moreover, and equally important, Teligent urges the Commission to swiftly issue an order in this proceeding so that the auction can be scheduled and commenced before the end of this year.

Respectfully submitted,

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Dated: February 7, 2000

CERTIFICATE OF SERVICE

I, Rosalyn Bethke, do hereby certify that on this 7th of February, 2000, copies of the attached document were served by hand-delivery on the following parties:

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